

# New Jersey State Tax News

## Winter 2000

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### Form NJ-1040EZ Introduced

The Division of Taxation has developed a simpler, one-page income tax return/homestead rebate application for residents, Form NJ-1040EZ. Created with New Jersey earned income tax credit filers in mind, the new form is designed to make filing easier and less time-consuming, particularly for those who wish to apply for the new credit, but who are not required to file a State return because their income is below the minimum filing threshold. To qualify to use Form NJ-1040EZ, a taxpayer must have been a full year New Jersey resident during 2000, and have income limited to wages, interest or dividends. Other limitations apply. For example, individuals whose filing status is married, filing separate return, or those who wish to use the Pension Exclusion or Other Retirement Income Exclusion cannot use Form NJ-1040EZ. □

### What's New for Tax Year 2000

In addition to a new tax form, this year brings a new earned income tax credit, and several other legislative and administrative changes.

- **New Jersey Earned Income Tax Credit** — New Jersey households that file for and receive a Federal earned income credit which is based on having

at least one "qualifying child," and whose New Jersey gross income is \$20,000 or less, and whose filing status for both Federal and New Jersey purposes is either married, filing joint return, head of household or qualifying widow(er) are eligible for a refundable New Jersey credit. To apply, eligible residents must file a New Jersey income tax return and complete the New Jersey Earned Income Tax Credit Schedule portion of the form they file. Benefits are being phased in over a four-year period. The amount of the New Jersey credit for 2000 will be equal to 10% of the applicant's Federal earned income credit.

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### Important Phone Numbers

Customer Service Ctr...	609-292-6400
Automated Tax Info .....	800-323-4400
.....	609-826-4400
Speaker Programs .....	609-984-4101
NJ TaxFax.....	609-826-4500
Alcoholic Bev. Tax .....	609-984-4121
Corp. Liens, Mergers, Withdrawals & Dissolutions.....	609-292-5323
Director's Office .....	609-292-5185
Inheritance Tax .....	609-292-5033
Local Property Tax .....	609-292-7221
Motor Fuels Tax	
Refunds .....	609-292-7018
Public Utility Tax.....	609-633-2576

<http://www.state.nj.us/treasury/taxation>

what's new for 2000 - from pg. 1

- **Higher Filing Threshold** — The thresholds at which taxpayers become subject to the New Jersey gross income tax and are required to file a New Jersey income tax return are being increased over a three-year period which began with tax year 1999. For tax year 2000, the minimum threshold is \$15,000 or less (married, filing joint return, head of household, or qualifying widow(er)), \$7,500 or less (married, filing separate return) and \$10,000 or less (single filers and estates and trusts).
- **Retirement Income Exclusions Increased** — The maximum amounts of pension and/or other retirement income that may be excluded from New Jersey gross income have increased. The new exclusion amounts are being phased in over a four-year period. For tax year 2000, the maximum exclusion is \$12,500 (filing status married, filing joint return), \$6,250 (filing status married, filing separate return) and \$9,375 (filing status single, head of household, or qualifying widow(er)).
- **Health Insurance Deduction for Self-Employed** — Effective for tax year 2000, self-employed individuals and holders of more than 2% of the shares of an S corporation may deduct the amount paid for health insurance for themselves, their spouses and their dependents.
- **Qualified Conservation Contributions** — A gross income tax deduction is allowed for qualified contributions made for conservation purposes of certain interests in real property located

in New Jersey. The amount of the deduction is the amount of the contribution allowed as a deduction for Federal income tax purposes.

- **Online Extensions** — During the tax filing season, a four-month extension of time to file the New Jersey income tax return may be requested online by using the interactive version of extension request Form NJ-630 located on the Division of Taxation's home page at:

[www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)

Requests for extensions of time to file 2000 New Jersey income tax returns may be filed online until 12 midnight, April 16, 2001. If a payment is required with the online extension application, *the payment must be made by credit card.*

- **Direct Deposit of Refund** — A taxpayer who files a return using NJ TeleFile, NJ PC File, or other electronic method may request that either their New Jersey income tax refund check, or homestead rebate check, or both, be directly deposited into their account at a bank or other financial institution.
- **NJ TeleFile Program** — The NJ TeleFile Program has been expanded so that even more New Jersey residents will be able to use this "paperless" filing method. The changes this year include:
  - No income limit:** You can TeleFile your New Jersey return regardless of your total income, if you had income only from wages, interest (\$2,500 or less) or dividends (\$2,500 or less).

## New Jersey State Tax *news*

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[taxation@tax.state.nj.us](mailto:taxation@tax.state.nj.us)

This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning New Jersey tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

**Division of Taxation Director:**  
Robert K. Thompson

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what's new for 2000 - from page 2

- More W-2 forms:** You can TeleFile with as many as five W-2 forms for yourself and five for your spouse.
- Excess UI/HC/WD and DI Contributions:** You can claim a credit for excess contributions withheld by two or more employers.
- Direct Deposit:** You can have your refund and/or homestead rebate check(s) deposited directly into your checking or savings account. ☐

## Tax Year 2000 Corrections

### MEDICAL EXPENSES DEDUCTION

As a result of a late change to Federal Form 8853, the instructions for completing Line 4 of the New Jersey medical expenses deduction worksheet now contain an error. The worksheet is used for calculating the amount of medical expenses taxpayers can deduct on their New Jersey resident (Form NJ-1040 and NJ-1040EZ) and nonresident (Form NJ-1040NR) returns.

The instructions for completing Line 4 of the New Jersey medical expenses deduction worksheet direct taxpayers to enter the amount of qualified medical savings account contributions from "Line 7, Federal Form 8853." The reference to Line 7 is incorrect.

Taxpayers who are reporting medical savings account contributions should use the amount from Line 5 of the 2000 version of Federal Form 8853.

### PACKAGE NJX CD ROM

The CD ROM version of *Package NJX* for tax year 2000 contains an incorrect version of the 2000 Form NJ-1040X, Amended Resident Income Tax Return. The printed version of *Package NJX* contains the correct 2000 Form NJ-1040X.

A correct version of Form NJ-1040X is also available from the following sources:

Division of Taxation Web site:  
[www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/)

Automated Tax Information System – Forms Request Service  
1-800-323-4400

NJ TaxFax  
609-826-4500 from your fax machine's phone

Write to:  
NJ DIVISION OF TAXATION  
TAXPAYER FORMS SERVICES  
PO BOX 269  
TRENTON, NJ 08695-0269  
☐

## CORPORATION TAX Gain/Loss on Sale of Subsidiary

Many taxpayers that sell a subsidiary which has been part of its consolidated Federal tax return are not reporting the correct amount of capital gain or loss for New Jersey purposes.

In general there are two methods to account for an investment in subsidiary stock. The first is the Cost method. The original amount of the investment is recorded and remains constant for as long as it is owned. There are no adjustments made to the investment account for the subsidiary's earnings or for dividends received. The second method is the Equity method. Under this method the investment

account is adjusted each period for dividends received and subsidiary earnings, and deferred taxes are recognized. The use of these methods can result in vastly different investment basis.

When an invested subsidiary is part of the same combined group, the investment account is eliminated in consolidation. The consolidation results in a similar investment basis as if the equity method had been used.

Pursuant to N.J.A.C. 18:7-11.15(b) New Jersey corporation business tax returns must be filed on an unconsolidated basis. If for New Jersey tax purposes the Cost method of subsidiary investment was utilized, the basis used for determining the gain/loss from a subsidiary sale will be different from the basis used for Federal

*continued on page 4*

## Interest Rates

**Fourth Qtr. '00 — 11.50%**  
**First Qtr. '01 — 12.50%**

The interest rate assessed on amounts due for the fourth quarter of 2000 is 11.50%, and the interest rate for the first quarter of 2001 is 12.50%.

The assessed interest rate history for the last eight quarters is listed below.

Effective Date	Interest Rate
4/1/99	10.75%
7/1/99	10.75%
10/1/99	10.75%
1/1/00	11.50%
4/1/00	11.50%
7/1/00	11.50%
10/1/00	11.50%
1/1/00	12.50%

*sale of subsidiary - from page 3*

purposes which has recognized the effect of consolidation.

Taxpayers are advised to determine the method used to report subsidiary investments on New Jersey's separate entity returns and, if necessary, adjust the gain/loss reported. This change may also have to be taken into consideration in the compilation of the receipts fraction of the allocation factor. □

### **GROSS INCOME TAX** ***Reporting and Recognition of Income***

A tax practitioner recently inquired as to the taxability of distributions and deemed distributions from Regulated Investment Companies and Passive Foreign Investment Companies for gross income tax purposes. The practitioner also asked if a taxpayer who elects to defer the reporting of the income or to defer payment of the

tax for Federal purposes would be accorded the same elections for gross income tax purposes.

The Division published its position on the reporting of income from such entities in an article entitled "Accounting Methods" in the Winter 1998 issue of the *New Jersey State Tax News*, Volume 27, Number 4, page 11.

The Gross Income Tax Act at 54A:8-3(c) Accounting Methods, states in part that "A taxpayer's accounting method under this act shall be the same as his accounting method for Federal income tax purposes." A taxpayer's method of accounting for Federal income tax purposes determines not only the method used to compute income but also determines when income is to be recognized and reported.

Taxpayers that receive distributions and/or deemed distributions from Regulated Investment Companies or Passive Foreign Investment Companies must recognize and report the income in the same period as they do for Federal tax

purposes. If a taxpayer makes a Federal election that allows them to defer recognition and reporting of the income until some future time or event, they may do so for gross income tax purposes.

A shareholder of a Passive Foreign Investment Company (PFIC) that elects to be treated as a Qualified Electing Fund (QEF) and files Federal Form 8621 to make an election to extend the time for payment of the tax, with interest, on their share of the undistributed earnings of the QEF, cannot make such an election for gross income tax purposes.

There is no provision in the Gross Income Tax Act like those contained in IRC sections 1291 and 1294 that allow taxpayers to elect a deferral of payment of the tax owing, with interest, on undistributed income from a QEF. For gross income tax purposes taxpayers must pay the tax in the same period that the income is recognized and reported. □

# *NJFast File*

For information: **1-800-323-4400** or **[www.state.nj.us/treasury/taxation](http://www.state.nj.us/treasury/taxation)**

## **INHERITANCE TAX**

### ***Waivers for Nonresident Decedents***

The nonresident inheritance tax is a privilege levy on the transfer, by a nonresident decedent, of real and tangible personal property located in this State. Accordingly, the transfer of intangible personal property is not subject to the tax in the estate of a nonresident. Intangible personal property includes such items as bank accounts, stocks, bonds, patents and partnership interests. The situs of intangible personal property is deemed to be at the domicile of the decedent. Therefore, any state death taxes would be levied by the decedent's domicile state.

Waivers are needed for the transfer of New Jersey real estate only. A nonresident inheritance tax return is required in all estates containing New Jersey real estate and tangible personal property.

If the nonresident's estate includes any items of intangible personal property which would have required a waiver had the decedent been a resident, the personal representative must submit an affidavit of domicile directly to the bank, transfer agent, etc., to obtain the release of those assets. The bank, transfer agent, etc., has the authority to transfer those assets if convinced, by the proofs submitted, that the decedent was domiciled outside of New Jersey.

The content of the affidavit of domicile utilized to effect the transfer of such New Jersey intangible personal property, is described in N.J.A.C. 18:26-11.1(b)2. The affidavit should

include the following information concerning the decedent:

1. Place of residence and voting;
2. Social and business affiliations;
3. Where the last five income tax returns were filed prior to death;
4. Date of commencement and length of actual residence in place claimed as legal domicile;
5. Whether decedent formerly resided in New Jersey and, if so, what facts are relied upon to establish abandonment of New Jersey and intention not to return.

Nonresident estates having only intangible personal property need only follow this procedure. There is no need to file a nonresident inheritance tax return. □

### ***E-Mail Responses to Bills***

In an effort to make it easier for taxpayers to resolve notices they receive, the Division has begun to include e-mail addresses on many of the Statements of Account and Billing Notices being sent out. Taxpayers who have access to e-mail may reply to these addresses to notify the Division of discrepancies between their records and the Division's, and can be sure that the correspondence is being sent to the appropriate area of the Division.

E-mail addresses are now included on Statements of Account and Billing Notices for the following taxes:

- NJ Gross Income Tax (individual)
- NJ Gross Income Tax (employer withholding)
- Alcoholic Beverage Tax

- Atlantic City Luxury Sales Tax
- Business Personal Property Tax
- Cape May County Tourism Sales Tax
- Public Community Water System Tax
- Motor Fuels Tax
- Petroleum Products Gross Receipts Tax
- Sales and Use Tax (including Sales and Use-Energy and Urban Enterprise Zone)
- Spill Compensation and Control Tax
- Tobacco Products Wholesale Sales and Use Tax

The e-mail address printed on a Statement of Account or Billing Notice should be used for resolution of that notice only and should not be used for requests for information or general tax inquiries. General e-mail should be sent to the Division at:

**taxation@tax.state.nj.us**

or, through the Division's Web site at:

**www.state.nj.us/treasury/taxation/ □**

## **LOCAL PROPERTY TAX**

### ***Farmland Acreage***

A report summarizing data from farmland assessment applications (FA-1) has recently been completed. The study shows that the total acreage devoted to agricultural or horticultural use in 2000 was 1,146,500 acres for the entire state.

The data for tax year 2000 reflects a continued decline in the amount of qualified farmland since the enactment of Chapter 48, Laws of 1964 (the "Farmland Assessment Act"). Since 1983, the year in which the highest acreage, 1,271,882 acres,

*continued on page 6*

*farmland acreage – from page 5*

qualified for farmland assessment, the amount of qualified acreage has declined 9.9% or a total of 125,382 acres.

23.9% of New Jersey's land mass is approved under the Farmland Assessment Act. Hudson County remains the only county without farmland. Essex and Union each report less than 500 acres devoted to agricultural or horticultural use. Conversely, Salem with 54.4% has the greatest proportion of its land qualified under the Act. Other counties with large percentages of qualified farmland are: Hunterdon, 50%; Warren, 49.8%; Gloucester, 37.8%; Sussex, 33.7% and Mercer, 29.5%.

Copies of the 2000 report have been distributed to the County Tax Board Administrators. Anyone seeking specific information on qualified farmland acreage or wishing to obtain a copy of the report may do so by calling 609-292-7974. □

### **LOCAL PROPERTY TAX F.E.A.C. Adopts Values for 2001**

The Farmland Evaluation Advisory Committee (F.E.A.C.) met on August 24, 2000, at the Phillip Alampi Laboratory in West Trenton to adopt a range of values for each of the several classifications of land in agricultural or horticultural use by county. In addition, the F.E.A.C. establishes values for income imputed to land used for grazing.

The thirty-seventh Report of the Committee, showing the value ranges adopted, is mailed to municipal assessors and county

boards of taxation in early October of each pre-tax year. Land qualifying for farmland assessment must be assessed in accordance with its productivity and its agricultural or horticultural use rather than its market value.

The farmland values adopted by the committee for 2001 increased in all 20 counties where qualified farmland is located. Increases in cropland having a B soil group rating averaged from \$20.00 to \$40.00 per acre when compared to 2000 values. □

### **LOCAL PROPERTY TAX New System to Replace MOD IV**

The Division of Taxation has published an RFI (Request for Information) to acquire a comprehensive system for local property assessment and tax administration. This new comprehensive system

will be known as the Property Assessment and Management System (PAMS).

The new system will replace the State's current MOD IV batch system and individual vendor municipal applications with a fully integrated online transaction system, which will perform the same tasks, but provide additional functionality, seamless integration, uniform processing, improved performance, and streamlined maintenance functions.

PAMS will achieve the following:

- Internet access to local property tax data for citizens, businesses and governmental agencies, and electronic submission of data to and from taxation systems;
- Accurate and uniform data collection, utilization and reporting of real property assessment information and the billing

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## **Pay NJ Taxes By Credit Card\***



- Personal and Fiduciary Income Tax and Estimated Payments
- Sales and Use Tax
- Deficiency payments for Corporation Business Tax Sales and Use Tax Gross Income Tax Withholding Personal Income Tax

By Phone — 1-800-2PAYTAX  
Through the Internet — [www.officialpayments.com](http://www.officialpayments.com)

**For more information:**

<http://www.state.nj.us/treasury/revenue/> or

<http://www.state.nj.us/treasury/taxation/>

\* Fee of 2.5% of tax payment applies.

*new PAMS system - from page 6*

process for local taxes;

- Enhanced functionality from that currently provided by the State's Property Tax Assessment System (MOD IV), and separate vendors' systems such as Sales Recording, Farmland Tracking, Assessment Appeal Scheduling and Disposition, Building Permit Interface, Computer Assisted Mass Appraisal, Commercial/Industrial Property Assessment, and a Tax Collection component/interface;
- Incorporation of new technologies necessary to accomplish the above including GIS, Public Access, Electronic Mail and Ad Hoc Reporting;
- A multi-tiered, web-based environment which will ease the administration of this statewide system and improve the communication and data sharing among all levels of government. □

### **LOCAL PROPERTY TAX** ***Deductions*** ***Certified***

The 2000 State Revenue Sharing Act Distribution for senior and disabled persons, surviving spouses and veterans was delivered to the State Treasurer on September 15, 2000.

As required by the provisions of N.J.S.A. 54A: 10-1 et seq., as amended, the Director of the Division of Taxation certified to the State Treasurer in this report the amount of revenue sharing funds due each municipality on November 1, 2000.

The total amount of property tax deductions for senior and disabled persons and surviving spouses for

2000 was \$28,835,474. That amount represents a decrease of 8.9% from 1999.

The total number of property tax deductions for senior and disabled citizens and surviving spouses for 2000 was 112,176. When compared to tax year 1999 the number of deductions decreased 7.4%.

The amount of veterans' deductions for tax year 2000 was \$33,275,446. For tax year 1999 the amount of veterans' deductions was \$17,043,098. The large increase is due to the fact that for tax year 2000 the veterans' deduction increased from \$50 to \$100 per deduction. The veterans' deduction will increase in \$50 increments in each of the next 3 years until it reaches \$250 for tax year 2003.

The total number of veterans' deductions for 2000 was 337,344. When compared to tax year 1999 the number of deductions increased .9%.

The total amount of property tax deductions and veterans' deductions includes the additional 2% each municipality is reimbursed for administrative costs as a result of c.30, P.L. 1997. □

### **LOCAL PROPERTY TAX** ***Tax Assessors'*** ***Calendar***

#### **January 1–**

- Hearings of added assessment appeals completed by County Tax Board.
- Hearings of assessors' omitted assessment appeals completed by County Tax Board.
- One copy of Farmland Assessment applications, FA-1s, sent to

County Tax Administrator by assessor.

#### **January 10 (before)–**

- Taxpayer to give assessor notice of depreciation to structure occurring after Oct. 1 and before Jan. 1.

#### **January 10–**

- Copies of Initial Statement and Further Statement filed with County Tax Board.
- Assessment Lists and duplicates filed with County Tax Board.
- Duplicate copy of municipal tax map filed with County Tax Board.
- Two copies of Form SR-3A filed with County Tax Board.
- Estimated total amount of approved veteran and property tax deductions filed with County Tax Board.
- Assessor to provide Forms JDC-1 and JDC-2, assessed value of new construction/improvements, local municipal purpose rate and allowable municipal budget cap increase, to County Tax Administrator.
- Assessor to file "U.E.Z. Exemption Report" with County Tax Board.

#### **January 25–**

- Assessor's schedule of hours and appointment availability given to County Tax Administrator and posted in the municipal building.

#### **February 1 (prior)–**

- Notices of current assessment and preceding year's taxes mailed to each taxpayer by assessor.

#### **February 1–**

- Whenever an assessor fails, for any reason, to mail or otherwise

*continued on page 8*

*assessors' calendar - from pg. 7*

deliver a notification of assessment or change in assessment, the County Tax Board may extend the time for appeal with the approval of the Director of the Division of Taxation.

- MOD IV Master file sent to Property Administration via magnetic tape.
- Assessors' office hours furnished to Director, Division of Taxation by County Tax Administrator.
- Collector to forward Annual Post-Tax Year Statement (Form PD-5) to recipients of prior year's property tax deduction.

#### **February 10–**

- Certification, by assessor to County Tax Board or by County Tax Board to County Tax Administrator, of the date the bulk mailing of notification of assessment completed.

#### **February 15–**

- County Tax Administrator to forward FA-1 forms to Property Administration in district order.

#### **March 1–**

- Post-Tax Year Statement, PD5, filed with tax collector by all recipients of property tax deduction.
- County Tax Administrator to submit equalization table to County Tax Board, each assessor, Division of Taxation, and post a copy at the courthouse.

#### **March 10 (before)–**

- Equalization table hearings completed by County Tax Board.

#### **March 10–**

- Confirmed equalization table sent by County Tax Board to each taxing district in the county,

to Director, Taxation, and to Tax Court. □

## **Criminal Enforcement**

Criminal Enforcement over the past several months included:

- On June 22, 2000, Ahmed O. Mohammed of Brooklyn, New York, was arrested by the Office of Criminal Investigation (OCI) when he was observed loading his vehicle with contraband cigarettes (1,166 cartons) from a storage unit in Fairview, New Jersey. As a result of the investigation, we determined that Mr. Mohammed was involved in an ongoing multi-state cigarette smuggling enterprise. The evidence shows that the contraband cigarettes were purchased in the State of Virginia. Thus, the case was referred to the U.S. Attorney's Office for the Eastern District of Virginia for Federal prosecution. On August 1, 2000, Ahmed O. Mohammed was indicted by the Federal Grand Jury sitting in Richmond, Virginia. This case is part of OCI's involvement in a multi-state task force involving the U.S. Attorney General's Office to prosecute the multi-state traffickers. OCI received substantial assistance in this case from the New York City Department of Finance, Office of Tax Enforcement.
- On July 10, 2000, Anthony J. Billings, a real estate appraiser based in New Brunswick, New Jersey, was sentenced to five (5) years probation. The sentence was a result of his guilty plea for tampering with time sheets

he submitted to North Brunswick Township and failing to file New Jersey gross income tax returns for the years 1995, 1997, and 1998. Mr. Billings was ordered to make full restitution in the amount of \$12,439.22 to the State of New Jersey. This investigation was a joint effort with the Middlesex County Prosecutor's Office and the Office of Criminal Investigation.

- On July 18, 2000, in Old Bridge Township Municipal Court, KRSM, Inc., trading as Madison Exxon, a gasoline retailer/convenience store/auto repair facility, pled guilty to recklessly or negligently filing false tax returns for the period January 1, 1997 through December 31, 1999. The false returns resulted in the underreporting and underpayment of \$16,141.52 in sales and use tax.
- On July 21, 2000, in Hudson County Superior Court, George J. Halpern, of Short Hills, New Jersey, was sentenced on a guilty plea he had entered on May 1, 2000, to one count of failing to file a 1997 New Jersey personal income tax return in connection with his business as a tax preparer. Mr. Halpern was sentenced to three (3) years probation, ordered to perform 300 hours of community service, fined \$5,000, and is precluded from acting as an accountant or tax preparer, except under the supervision of another person who will be responsible for the accuracy of his work, for three years. Prior to sentencing, Mr. Halpern had made restitution to the State of New Jersey of \$26,492. In the same proceed-

*continued on page 9*



ings, Mr. Halpern's son, Todd Halpern, of West Orange, New Jersey, was accepted into a Pre-Trial Intervention Program (PTI) pursuant to a plea of guilty he had entered on May 1, 2000, to a charge of filing a fraudulent 1997 New Jersey personal income tax return (phony W-2s). The term of Todd Halpern's supervision under PTI is one year, during which time he must complete 100 hours of community service, pay \$125.00 in court fees, and is precluded from acting as an accountant or tax preparer except under the supervision of another person who will be responsible for the accuracy of his work. Prior to acceptance into PTI, Todd Halpern had made restitution to the State of New Jersey in the amount of \$3,392. The Office of Criminal Investigation investigated this case with the substantial assistance of the Division of Taxation's Audit Activity and Investigations Branch, and the case was prosecuted by the Attorney General's Office.

- On August 11, 2000, Superior Court Judge Irvin J. Snyder sentenced Dok Yu Ryu, of Browns Mills, New Jersey, to four (4) years imprisonment for attempting to bribe a State Division of Taxation Special Agent. Mr. Ryu, owner of Tri-State Wholesale Distributors, Inc., (a New Jersey cigarette distributor) pled guilty to bribery in State Superior Court in March. He was also fined \$10,000 personally, and his company was fined \$75,000.
- On August 28, 2000, in Trenton, New Jersey, a State Grand

Jury indicted Truyen T. Vo on separate counts of filing fraudulent New Jersey State income tax returns and failure to pay tax for the years 1995 to 1998. It is alleged that Mr. Vo failed to report \$281,409 in illegal gambling income resulting in the failure to pay \$26,099 in personal income tax, penalty and interest. Mr. Vo and four associates were also indicted for promoting gambling in a sports betting operation. This case was investigated jointly by the New Jersey State Police, the Division of Criminal Justice, and the Office of Criminal Investigation and was presented to the Grand Jury by the Attorney General's Office.

- On August 29, 2000, a joint investigation was entered into with the Cumberland County Prosecutor's Office based on information that several individuals in Cumberland County may have filed multiple fraudulent New Jersey Homestead Rebate Applications and may have received multiple rebates. As a result of the investigation, three Bridgeton, New Jersey, residents have been charged with Theft by Deception. The investigation is continuing.
- On September 12, 2000, Misa Corp t/a Metro Liquors of East Rutherford, New Jersey, was found to be operating without a current retail cigarette license. Office of Criminal Investigation (OCI) personnel visited the location at the request of Newark Field Audit personnel, who indicated that the company had failed to cooperate by supplying requested cigarette invoices. Those documents were obtained

from the distributor and turned over to Newark Field Audit for examination. One count of Operating without a Current Retail Cigarette License and one charge of No Invoices have been filed in the Newark Municipal Court.

- On September 20, 2000, members of the Office of Criminal Investigation participated in the execution of a search warrant in Philadelphia, Pennsylvania, with agents from the United States Postal Inspection Service. The location was the residence of an individual suspected of filing over 380 fictitious New Jersey Homestead Rebate Applications and the fraudulent receipt of \$113,000 in rebates. The suspect used a sophisticated scheme involving banks in Pennsylvania, New York, Virginia and California to launder the proceeds and avoid detection. Evidence relating to homestead rebate fraud in New Jersey was seized at the residence together with \$4,900 in cash and \$17,000 in United States Savings Bonds. The resident was arrested on Federal charges of Mail Fraud, Forgery, Identity Fraud and Fraudulent Use of a Financial Access Device.
- The Office of Criminal Investigation assisted the Office Audit Motor Fuels Group in the prevention of the retail sale of gasoline at less than cost by three (3) New Jersey shore area gas stations.
- One hundred (100) complaints alleging tax evasion were evaluated from July to September 2000 in the Office of Criminal

*criminal enforcement - from pg. 9*

Investigation.

- From July to September 2000, fifty-four (54) charges were filed in court on seventeen (17) cases for violating the Cigarette Tax Act including possession of 1,452.4 cartons of contraband cigarettes, valued at \$50,834.00 and resulting in seventeen (17) arrests. □

## **Tax Briefs**

### **Sales and Use Tax**

**Farming Use Exemption** — Legislation expanding the scope of the farming use exemption from sales and use tax was signed into law as P.L. 1999, c. 314, on January 6, 2000. The exemption applies to sales made on or after January 1, 2000. The legislation amends the farming use exemption by substantially expanding the scope of the exemption and reducing the scope of certain exclusions from the exemption.

The exemption provided by N.J.S.A. 54:32B-8.16 now applies to purchases of tangible personal property, production services and conservation services. However, it applies *only* when the property or service is purchased for use or consumption directly and primarily in the production for sale, or handling for sale, or preservation for sale of agricultural or horticultural commodities. In addition, the exemption applies only to purchases by a farmer of property or services used in his own farm, i.e. it does not apply to purchases by contractors or other service providers doing work for the farmer.

Three categories of tangible personal property are not eligible for the farm exemption: purchases of automobiles, energy, or materials used to construct a building or structure. However, the law has carved out an exception to this exclusion. Thus, a farmer's purchases of materials to construct a silo, greenhouse, grain bin or manure handling facility might be eligible for the farming use exemption if the facility will be used directly and primarily in production, handling or preservation for sale of the farmer's agricultural or horticultural commodities.

Farmers making exempt purchases of goods or services under N.J.S.A. 54:32B-8.16 must present their vendor with a properly completed Farmer's Exemption Certificate (ST-7). The Form ST-7 was amended in February 2000 to reflect the recent changes in the law, and copies of the updated form are now available.

P.L. 1999, c. 314, also amends the container and wrapping supply exemption provided by N.J.S.A. 54:32B-8.15. The amendment allows an exemption for the sale of containers used in a farming enterprise. Farmers claiming an exemption under this provision must use an Exempt Use Certificate (ST-4) to support their exemption.

The policies implementing the amended farming use exemption have been codified in the Division's new sales tax regulations at N.J.A.C. 18:24-19.1 et seq.

**In Ground Pools** — The Division responded to an inquiry concerning the installation of a safety cover for an in ground pool. The installation of the pool itself, with associated plumbing and decking, is a capital improvement to real

property. As such, the contractor pays tax on the materials and supplies and the labor is exempt from tax. The property owner is not charged any tax on the improvement and may issue a Certificate of Capital Improvement (Form ST-8).

A safety cover is not permanently affixed to the realty. Rather, it remains tangible personal property that may only be utilized during periods of extended non-use. Therefore, the cover is subject to tax when sold to the property owner. N.J.S.A. 54:32B-3(a). A charge for installing the cover is also subject to tax. N.J.S.A. 54:32B-3(b)(2).

**Manufacturer Rebates** — For the purposes of the New Jersey Sales and Use Tax Act, sales tax must be charged on the total "receipt" from a retail sale; i.e., the actual amount of the sales price payable to the retailer. See N.J.A.C. 54:32B-2(d). This is so regardless of whether that sales price will be paid entirely by the customer, or by moneys paid by the customer's friends and family, or by a combination of the customer and the manufacturer.

If the retailer chooses to sell an item at a discounted price, the customer should be charged tax on the discounted price payable to the retailer, not on the original price before reductions. The reduced price is the "receipt" on which the 6% sales tax is calculated.

When a customer pays full price, but is reimbursed by the manufacturer for part of that price in the form of a manufacturer's rebate, the tax is due on the full price originally payable to the retailer. This is because the retailer is receiving the full price and sales tax

*continued on page 11*

is calculated on the total "receipt" payable to the retailer. Similarly, if a customer pays the retailer a reduced price by using a manufacturer's coupon or by relying on a rebate that the manufacturer will send to the retailer as part of the customer's payment, the customer will owe tax on the full price. The "receipt" payable to the retailer will be the total of the reduced price payable by the customer plus the amount that the retailer will receive from the manufacturer (measured by the face value of the coupon or rebate). Sales tax is calculated on the total "receipt," not just on the portion of the receipt paid by the customer.

#### ***Discounts Offered Through "Vendor Allowance" Programs***

— A vendor has contractual arrangements with some merchandise suppliers whereby the vendor agrees to provide the suppliers with certain promotional and advertising services in exchange for various vendor allowances. Examples of such services are: reduced prices charged on a product for a limited time, partial refunds for products already delivered and billed, permanent price reductions on an item, payments to the vendor for featuring the supplier's products in the vendor's promotional

materials, and payments to the vendor based on the volume of the supplier's merchandise sold. By the terms of these contracts, *the vendor is not obligated to pass these monetary benefits on to its customers*; it is free to retain the allowances as additional profit.

The vendor has decided to offer product discounts to customers who participate in a promotional program that involves the use of scan cards. Customers who present the card receive a discount on certain products chosen by the vendor. Some or all of the discounted products may be supplied by companies that have given the vendor a "vendor allowance" in exchange for its promotional services.

Based on the above facts, the discount connected with a customer's use of the scan card will be treated as a vendor discount rather than a manufacturer's discount. This is because, even if the customers' discounts are funded by the special allowances the vendor has received from its supplier, the vendor allowance, by its terms, was *not* required to be passed on to the retail customer and is *not* tied to a specific sale by the vendor. The vendor allowance in these situations is not third-party payment for the merchandise the vendor sold to the customers. The

vendor is neither reimbursed nor paid in advance for discounts offered to customers on specific sale transactions. Therefore the vendor allowance will not be deemed to be part of the vendor's "receipt" for the retail sale of a specific item to a specific customer. See N.J.S.A. 54:32B-2(d); N.J.A.C. 18:24-1.4(h). Sales tax should therefore be charged on the price charged *after* deducting the vendor's discount provided through use of the scan card.

#### ***Sale of Medical Equipment*** —

Although they are frequently used for therapeutic or physical rehabilitative purposes, whirlpools, power massagers, bath tub neck pillows, and chair back supports are also commonly used to enhance the comfort of people who do not have any illness or injury. Therefore, they generally do not qualify for exemption as durable medical equipment pursuant to N.J.S.A. 54:32B-8.1. However, in some cases, such equipment might qualify for exemption if it is specifically designed for a medical purpose and is *not* generally useful

*continued on page 12*  
to a person who does not have an illness, injury or disability. For example, a whirlpool designed for the hand rather than the full body is not generally used in the ab-

## ***Enforcement Summary Statistics Third Quarter 2000***

Following is a summary of enforcement actions for the quarter ending September 30, 2000.

• Certificates of Debt:		• Jeopardy Seizures	0
Total Number	1,305	• Seizures	34
Total Amount	\$22,351,300	• Auctions	6
• Jeopardy Assessments	229	• Referrals to the Attorney General's Office	1,128

For more detailed enforcement information, see our Home Page at: <http://www.state.nj.us/treasury/taxation/>

sence of some physical injury, disability or pain involving the hand and may therefore qualify for exemption. A specific determination letter is required in such a case.

Moist heat packs are not generally useful in the absence of some injury or illness, and they are customarily and primarily used to serve a medical purpose. Therefore, moist heat packs can qualify for exemption under N.J.S.A. 54:32B-8.1. The exemption does not apply if the heat packs are sold to a medical services provider (e.g., doctor, physical therapist, nursing home, hospital) which uses it in providing services for compensation and does not transfer it to the patient for home use. N.J.S.A. 54:32B-8.1 (last paragraph). However, if it is sold to the patient for home use, the exemption applies even if an insurer, rather than the patient, is actually paying for the item.

**Recalibration Services** — The Division replied to an inquiry regarding the taxability of “recalibration” services. The inquirer sells precision weights, balances and laboratory apparatus to vendors of this equipment and also provides recalibration services to the end users of this equipment. It performs the service at its New Jersey location and then ships worldwide. It charges a fee for this service.

The recalibration service is deemed to be a service of maintaining or servicing tangible personal property, which is taxable pursuant to N.J.S.A. 54:32B-3(b)(2). The service is subject to New Jersey sales or use tax under the provision even if the equipment itself was exempt at the time

of purchase pursuant to the manufacturing of research and development exemptions, N.J.S.A. 54:32B-8.13a or N.J.S.A. 54:32B-8.14, respectively. However, the New Jersey tax applies only if the recalibrated items are then shipped to a New Jersey address, or picked up in New Jersey. The service will not be subject to New Jersey tax if the recalibrated items are shipped to customers outside of the state.

□

## In Our Courts

### Administration

**Adequate Notice** — *Leonard Santos v. Director, Division of Taxation*, decided January 21, 2000; Tax Court No. 002138-1999.

By letter dated January 10, 1995, the Division notified plaintiff’s corporation that it intended to conduct an audit of plaintiff’s business. The letter was addressed to the business at their P.O. Box in Trenton. After plaintiff alleged that there was a complete loss of its accounting records, the Division mailed an arbitrary assessment to the corporation at its North Broad Street, Trenton site address on December 5, 1995. The postal service could not deliver the letter and returned it to the Division. On December 8, 1995, the arbitrary assessment was mailed to the Trenton P.O. Box. This letter was also returned to the Division by the postal service with a “Box Closed” notation on the envelope.

On July 15, 1996, the Division sent a notice and demand for payment of tax to the corporation at the Trenton P.O. Box address. Plaintiff’s wife signed the mailing receipt. This notice advised the corporation that it had 90 days to appeal the Division’s determina-

tion of tax liability. The corporation neither protested the notice with the Division nor did it file a complaint with the Tax Court.

On July 15, 1996, the Division also sent a notice to plaintiff stating that he was personally liable for unpaid corporate taxes. This notice was sent to plaintiff’s address at Monmouth Junction, New Jersey, but was returned by the postal service with a notation “Attempted, Not Known.” Thereafter, the Division secured a Pennsylvania address for plaintiff through a credit-reporting agency. On October 3, 1996, the Division sent a notice to the PA address concerning plaintiff’s personal liability for corporate taxes and stated that he had a right to an administrative hearing provided he complied with N.J.A.C. 18:1-1.8 by filing a proper protest. This mailing was signed as received by plaintiff’s wife. On November 5, 1996, plaintiff’s accountant filed a nonconforming N.J.A.C. 18:1-1.8 protest. The Division’s Conference & Appeals Branch denied the protest as untimely and advised that an appeal to the New Jersey Tax Court must be made within a 90 day period. Plaintiff neither inquired as to why the protest was untimely nor did it file a complaint with the Tax Court.

On December 17, 1996, the Division’s Judgment Section advised plaintiff that his protest was received and that the corporate tax liability was fixed because there was no timely challenge to the corporate determination. Plaintiff was simultaneously advised that the issue of his personal liability for taxes could be challenged if he filed a proper protest. Further-

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more, plaintiff was notified that a Certificate of Debt would be filed against the plaintiff if the information were not supplied by January 10, 1997. Neither the plaintiff nor plaintiff's representative responded to the Division's December 17, 1996, letter. On January 17, 1997, the Division sent a notice to plaintiff advising him that on January 16, 1997, the Division entered a Certificate of Debt against him as a responsible person of his corporation.

There was no communication from plaintiff or his representatives until March 25, 1999, when plaintiff filed a motion in Superior Court seeking an order to vacate the judgment. The Superior Court judge denied the motion because the Tax Court had jurisdiction and allowed plaintiff 30 days to file the application with the Tax Court. Plaintiff then filed a motion similar to the one filed in Superior Court.

The Court granted the Division's motion to dismiss the complaint for

untimely filing. The Court ruled that plaintiff had adequate notice of the nature and extent of the tax liability imposed both on the corporation and him personally because (1) plaintiff's wife had signed for notices of both the corporate assessment and the responsible person assessment, (2) the certification of plaintiff's accountant indicated that plaintiff was aware of the notices at least by November 1996, (3) although plaintiff requested a hearing in November 1996, plaintiff did not file a conforming protest in accordance with N.J.A.C. 18:1-1.8 or respond to or comply with Division communications thereafter, and (4) plaintiff did nothing more until over two years later when it filed a motion in Superior Court. The Court also ruled that the Division's notices provided plaintiff with an opportunity to be heard but plaintiff did not avail himself of that opportunity in a statutorily timely manner.

**Division's Duty to Provide Notice of Changes to Tax Statutes** – *Schirmer-National Co. v. Director, Division of Taxation*,

17 N.J. Tax 495 (Tax Court 1998); Motion for Reconsideration, *denied* January 4, 1999; No. M00348-96, *aff'd*, Appellate Division, No. A-3877-98T2 (March 31, 2000).

The Tax Court followed its decision in *Aetna Burglar & Fire Alarm Co. v. Director, Div. of Taxation*, 16 N.J. Tax 584 (Tax Court 1997) that alarm monitoring services carried through telephone telecommunications are subject to sales tax pursuant to P.L. 1990 c.40.

Plaintiff also argued that the provisions of P.L. 1990 c.40 were so broad in taxing telecommunications that the sale of burglar alarm monitoring services should not be subject to tax until the time the Division provided proper notice of the tax law change. The Tax Court ruled that taxpayers are "put on notice of legislative enactments on the date the legislation becomes effective." Consequently, the Division of Taxation was not obligated to provide taxpayers with notice of changes in the tax law. The Appellate Division affirmed.

**Bankruptcy Discharge** – *Lloyd M. Cohen v. Director, Division of Taxation*, decided June 13, 2000; Tax Court No. 008458-96.

Plaintiff confessed to embezzling approximately two million dollars from his clients/creditors. The Chancery Division of the Superior Court appointed a custodial receiver to marshal assets and collect embezzled monies to satisfy the claims of the victims. In the process, the receiver entered into a closing agreement with the Internal Revenue Service and the Division where New Jersey Gross Income Tax returns (NJ-1040s) were filed for the periods 1986

## TAXATION REGIONAL OFFICES

New Jersey Division of Taxation Regional Offices provide individual assistance at locations throughout the State. Normal hours of operation\* are 8:30 a.m. to 4:30 p.m., Monday through Friday. Offices are closed weekends and holidays.

<b>Camden</b>	Suite 200, One Port Center, 2 Riverside Drive
<b>Fair Lawn</b>	2208 Route 208 South
<b>Newark</b>	124 Halsey Street, 2nd floor
<b>Northfield</b>	1915-A New Road (Route 9)
<b>Sea Girt</b>	2100 Highway 35, Old Mill Plaza
<b>Somerville</b>	75 Veterans Memorial Drive East, Suite 103
<b>Trenton</b>	Taxation Building, 50 Barrack Street, 1st floor lobby

\*Offices will be open for extended hours during the week prior to the April 16, 2001 deadline for filing 2000 income tax returns.

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through 1994 and taxpayer, not the receiver, would be responsible for payment of any tax, penalty, and interest. Pursuant to a court order, plaintiff and other interested parties were notified of the proceeding that approved of the terms and conditions of the closing agreement including the understanding that plaintiff was the sole and primary person responsible for payments of tax, penalty, and interest.

On July 24, 1996, the Division issued an assessment against plaintiff for the above mentioned tax liability. Plaintiff filed a timely complaint in Tax Court challenging the Division's assessment primarily on the grounds that the assessment was not valid against him personally because the NJ-1040s were filed by his custodial receiver. Plaintiff also filed for Chapter 7 with the United States Bankruptcy Court and the petition included the tax liabilities pertaining to the July 24, 1996, assessment. On or about February 14, 2000, the Bankruptcy Court granted plaintiff a Chapter 7 discharge.

On January 6, 2000, the Division filed a motion for summary judgment to dismiss plaintiff's complaint. After numerous adjournments to allow plaintiff time to respond, plaintiff's only submission was a copy of the order granting his Chapter 7 discharge.

The Court validated the Division's July 24, 1996, assessment by granting summary judgment in favor of the Division because plaintiff failed to present facts in opposition to the Division's motion. Failure to do so deemed the facts, as set forth by the Division, undisputed. The Court ruled that

the receipt of a bankruptcy discharge does not invalidate Tax Court proceedings and that the issue of the discharge should be litigated in Bankruptcy Court because of its significant expertise.

**Statute of Limitations and Record Retention** – *Alpha I, Inc., v. Director, Division of Taxation*, decided June 13, 2000; Tax Court No. 00373-1999.

Plaintiff did not provide the Division with purchase records to support the expenses pertaining to the first quarter of 1994. Therefore, the Division determined the use tax liability for the first quarter of 1994 by extrapolating the results of their examination of records pertaining to subsequent periods two to three years thereafter.

Plaintiff claims that the use tax assessment should be set aside because there was no requirement to retain purchase records for longer than three years pursuant to N.J.S.A. 54:32B-16. However, under N.J.S.A. 54:32B-27(b), the Director is permitted to issue assessments of sales and use tax for up to four years from the date of the filing date of the return.

In upholding the Division's assessment as timely in conformity with the statute of limitations on assessments, the Court rationalized that to quash the assessment "would in effect reward taxpayer for destroying records that are still subject to an audit and additional assessment." The Court ruled that the three-year retention period set a minimum time period to retain records and that "[a]lthough the taxpayer was not required to keep records beyond this three-year period, destruction of the records would put the taxpayer in jeopardy

because additional assessments may be levied until the expiration of the four-year statute of limitations." Therefore, the Court opined that taxpayer placed itself in peril by disposing of their records prior to the expiration of the statute of limitations period.

**Corporation Business Tax Income Includable in the Numerator of Receipts Fraction** – *Stryker Corporation, v. Director, Division of Taxation*, 18 N.J. Tax 270 (Tax Court 1999); *aff'd*, Appellate Division, No. A-736-99T5 (July 21, 2000).

At issue is whether the Division properly included in the numerator of Stryker's receipts fraction all receipts generated by drop-shipment transactions that occurred in New Jersey but which were destined for out-of-State customers.

Osteonics Corporation, a New Jersey corporation, is the wholly owned subsidiary of plaintiff Stryker Corporation, a Michigan corporation. Although Stryker and Osteonics are located in the same building in Allendale, New Jersey, Stryker paid all the real estate related costs.

Stryker manufactured hip and knee replacements. Stryker sold its products to its customers through its corporation Osteonics, whose sole function was to receive and process orders for Stryker's products. Osteonics' computers transmitted customers' orders to Stryker's computers. Then, Stryker packed and shipped the products to Osteonics' customers throughout the United States, via common carrier F.O.B. Allendale, without any intervention by Osteonics. Thereafter, Osteonics would bill its customers.

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Upon the receipt of customers' payments, Osteonics would retain a portion of the receipts and remit the balance to Stryker. Although Stryker did not invoice Osteonics for each order, company representatives reviewed Osteonics' sales receipts in order to determine price and profit allocations. Essentially, Osteonics retained an approximate twenty-percent gross margin and the payments from Osteonics to Stryker include a profit to Stryker.

In calculating the numerator of the receipts fraction, Stryker allocated sales to Osteonics by the shipment's destination state. Accordingly, for tax purposes, Stryker included sales of only New Jersey customer destination shipments in the numerator of the receipts fraction. Pursuant to an audit, the Division determined that all sales to Osteonics should be included in the numerator of the receipts fraction regardless of the ultimate destination state of the customer.

The Tax Court held that plaintiff's sales receipts from its direct shipments to Osteonics' out-of-State customers are includable in the numerator under N.J.S.A. 54:10A-6(B)(6). The Tax Court found that this statute required inclusion in the numerator of all receipts earned by the taxpayer in New Jersey including the intrastate transactions between plaintiff and Osteonics. The Tax Court also noted that the sales at issue were not includable under N.J.S.A. 54:10A-6(B)(1) because there were no physical shipments to Osteonics.

On appeal, the Tax Court was upheld. The Appellate Division found throughout all Stryker's arguments there existed a constant, single theme that for tax purposes

the two transactions, the sale of the product to Osteonics and the sale by Osteonics to its customers, should be treated as one transaction. However, the Appellate Division disagreed, opining that these sales were includable in the receipts numerator under N.J.S.A. 54:10A-6(B)(6) because Stryker realized income from sales of manufactured products located in New Jersey to New Jersey based Osteonics.

### **Gross Income Tax**

**Period to File Refund Claim –** *Clifford D. Wenrick v. Director, Division of Taxation*, decided May 12, 2000; Tax Court No. 003571-99.

Plaintiff filed his 1994 New Jersey Gross Income Tax return (NJ-1040) on May 28, 1998, claiming a \$699 refund due to excess employer income tax withholding. Although plaintiff alleges that he filed for and was granted an extension for the 1994 Federal tax return, an extension was not requested in New Jersey.

The Court found that N.J.S.A. 54A:9-8(a) was the operative statute relating to limitations on refund claims concerning New Jersey Gross Income Tax. This statute states that the amount of the refund "shall not exceed the portion of tax paid within the three years immediately preceding the

filing of the claim plus the period of any extension of time for filing the return."

The Court ruled that obtaining a Federal extension in and of itself does not automatically trigger a New Jersey extension. N.J.A.C. 18:35-6.1(a) permits a four-month extension to file the NJ-1040 where by the original due date of the NJ-1040 the taxpayer at the time of application for Extension To File (1) paid 80% of the tax liability computed on the NJ-1040 when filed and (2) attached a copy of the application for automatic Federal extension. As plaintiff never filed a request for extension with New Jersey, the Court ruled that plaintiff was not entitled to the four-month extension.

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Due to the May 28, 1998, filing of the NJ-1040, the Court ruled that plaintiff was entitled to a refund of 1994 taxes to the extent they were overpaid three years preceding the date the return was filed, between May 28, 1998, and May 25, 1995. As the employer-withheld taxes were deemed paid on April 15, 1995, per N.J.S.A. 54A:9-8(h), the original 1994 NJ-1040 due date, the taxes at issue are more than three years after the date of payment. Therefore, the Court denied plaintiff's refund request.

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**Partner's Distributive Share** – *Ronald J. Gumbaz v. Director, Division of Taxation*, decided March 30, 2000; Tax Court No. 3494-97.

Since 1981, plaintiff retained a 25% partnership interest in MTSG. Plaintiff's capital contributions to the MTSG partnership had a balance of \$20,883 as of 1993. However, plaintiff's balance in his MTSG capital account was negative \$28,403 as of December 31, 1993 due to partnership losses over the years.

In 1993, MTSG's amount of net income earned from its only investment in One Arkansas Associates was \$60,528 and it received \$868 in cash. MTSG reported plaintiff's distributive share of partnership income as \$15,132 and distributed \$217 to plaintiff. Plaintiff's Federal tax return also reported a \$47,010 loss from an S corporation. Plaintiff did not own interests in any other partnership in 1993.

Plaintiff's 1993 NJ-1040 reported zero income for plaintiff's distributive share of partnership income. The Division adjusted plaintiff's 1993 NJ-1040 return Line 20, Distributive Share of Partnership Income, from \$0 to \$15,132. Plaintiff claims that this income is not taxable because either (1) the income should be considered as a return of capital, (2) that the partnership income should be netted against the Subchapter S corporation loss or (3) that only the distribution received by him should be subject to tax. As discussed below, the Court rejected plaintiff's theories and held that plaintiff's

\$15,132 distributive income share of partnership income is taxable under N.J.S.A. 54A:5-1k.

**Distribution:** N.J.S.A. 54A:5-4 states that a partner's distributive share of partnership income or gain received by the partnership shall be subject to tax whether or not distributed. Plaintiff claims that the partnership actually received \$868 and therefore that, not the \$15,132, should be the basis for his New Jersey income tax as he is a cash basis taxpayer. The Court responded that the \$60,528 of net income MTSG earned from One Arkansas Associates indicates the amount of income that MTSG has the power to demand distribution of from One Arkansas Associates. The fact that MTSG chose not to withdraw the full amount does not mean it was not earned or available to the partnership. Furthermore, the Court stated that "received" does not mean that the income must be physically or actually put in your hand. Therefore, the Court ruled that regardless of MTSG's actual withdrawals, MTSG received \$60,528 of income from One Arkansas Associates of which \$15,132 is plaintiff's 25% taxable portion regardless of whether the partnership actually received the money.

**Return of Capital:** Plaintiff claims that he is being taxed on the return of capital because he has a negative MTSG capital account balance and he has not yet realized his investment in the partnership. The Court ruled that plaintiff's distributive share of partnership income could not be considered a return of capital because in order for the income to be characterized as a return of capital the partnership interest must be sold.

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**Netting of Income and Losses:** Plaintiff contends that he should be permitted to offset the 1993 partnership income against prior year partnership losses because he received no New Jersey tax benefit for partnership losses prior to 1993. The Court ruled that the Gross Income Tax Act does not specifically provide for a loss carryforward and therefore a taxpayer forfeits the loss if it cannot be offset by income in the same tax year.

Alternatively, plaintiff claims that he should be able to offset his 1993 \$15,132 partnership gain against the 1993 \$47,010 loss of the S corporation. The Court found that N.J.S.A. 54A:5-2 prohibits an inter-category offset by not permitting a taxpayer to apply losses within one category of gross income against gross income of another category. In 1993, New Jersey did not recognize S corporations and therefore there was no category of gross income to offset. In 1994, N.J.S.A. 54A:5-1p was added to tax the net pro rata share of S corporation income; however, the Court found that these are two separate categories of gross income and an inter-category offset is prohibited.

## **Sales and Use Tax**

**Admission Charges Imposed by Government Entities** – *Meadowlands Basketball Associates, v. Director, Division of Taxation*, decided July 24, 2000; Tax Court No. 000665-98.

Plaintiff is the owner of the Nets of the National Basketball Association. Pursuant to a license agreement, the New Jersey Sports

*continued on page 17*



and Exposition Authority (NJSEA) leased the Continental Airlines Arena to plaintiff for the Nets to play their home basketball games. The license agreement included the requirement that plaintiff charge, collect, and transfer to the NJSEA a 10% "admission impost" on the price of admission of each ticket sold to home games. The impost fee was included and separately stated on the face of each ticket.

Plaintiff did not charge or collect sales tax on the impost charge; however, it did collect and remit sales tax on the price of admission. Pursuant to an audit, the Division assessed plaintiff sales tax due on the 10% admission impost fee.

Plaintiff argued that the impost fee is exempt under N.J.S.A. 54:32B-9(a)(1), which exempts from sales tax the purchase and sale of certain goods and services by specified governmental agencies. It was clear that NJSEA was a specified governmental agency as it was created pursuant to the New Jersey Sports and Exposition Authority Law, P.L. 1971 c.137, N.J.S.A. 5:10-1 to -38. However, the Court ruled this particular exemption only applies to situations where NJSEA is the vendor, purchaser, user or consumer, not where it imposes an admission charge.

The Court found that N.J.S.A. 54:32B-9(a) does not apply to admission charges imposed by government entities to athletic events because it is addressed in N.J.S.A. 54:32B-9(f). Paragraph (f) states

that admission charges collected by State agencies are exempt from sales and use tax except in the case of collection of admission charges to athletic games. In the case of athletic games, the statute states that admission charges are exempt only if they inure exclusively to the benefit of elementary or secondary schools. As NJSEA used the impost charge to fund its statutory mandate of constructing and operating professional sports facilities in New Jersey, the admission charges were held to be subject to sales tax.

Finally, the Court reviewed a New York Tax Appeal Tribunal decision concerning nearly identical facts that granted an exemption in this situation after finding that admission charges are a service. The Court found three reasons as to why the New York decision was not persuasive. (1) Decisions of New York courts are not binding on New Jersey courts or controlling in interpreting New Jersey statutes. (2) The New York determination was decided by an administrative tribunal, not a court, and was not subject to judicial review. In New York, the taxing authority cannot seek review of an adverse administrative tribunal decision. (3) A comparison of the New York and New Jersey statutes concerning admission charges reveals a significant difference in that New York does not include political subdivisions or state agencies in the admission charge discussion. On the other hand,

N.J.S.A. 54:32B-9(f) is dispositive of the issue of taxability. □

## ***In Our Legislature***

### **Petroleum Products Gross Receipts Tax**

***Phase-Out*** — P.L. 2000, c.156 (signed into law on November 16, 2000) phases out, over a three-year period, the Petroleum Products Gross Receipts Tax for fuel used to generate certain electricity. The legislation eliminates the application of this tax to the sale of fuel used by a utility, co-generation facility or wholesale generation facility to generate electricity sold at wholesale or through certain retail sales channels. This law took effect January 1, 2001.

### **Unclaimed Property**

***Energy Assistance Funding*** — P.L. 2000, c.132 (signed into law on September 21, 2000) provides funding to an existing statewide non-profit energy assistance organization that helps needy families pay their energy bills with temporary financial assistance. The supplemental funding would be derived from the unclaimed property held by the State's electric and gas utilities that is transferred to the State under the "Uniform Unclaimed Property Act (1981)." The law also creates the Unclaimed Utility Deposits Trust Fund to hold unclaimed utility deposits. This legislation took effect immediately. □

# tax calendar

## january

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2001		1	2	3	4	5	6
	7	8	9	10	11	12	13
	14	15	16	17	18	19	20
	21	22	23	24	25	26	27
	28	29	30	31			

### January 10

**CWIP-1** Cigarette Tax—Informational report by wholesalers

**CWIP-2** Cigarette Tax—Informational report by wholesalers

### January 16

**CBT-100** Corporation Business Tax—Annual return for accounting period ending September 30

*continued*

### January 16 - continued

**CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

### January 22

**CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

**GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

**GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel

**MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

**SCC-5** Spill Compensation and Control Tax—Monthly return

**ST-20** New Jersey/New York Combined State Sales and Use Tax—Quarterly return

*continued*

### January 22 - continued

**ST-50** Sales and Use Tax—Quarterly return

**ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

**ST-350** Cape May County Tourism Sales Tax—Monthly return

**ST-450** Sales and Use Tax—Salem County—Quarterly Return

**TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return

**UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

### January 25

**PPT-40** Petroleum Products Gross Receipts Tax—Quarterly return

### January 30

**NJ-927 & NJ-927-W** Gross Income Tax—Employer's quarterly return

## february

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2001					1	2	3
	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28			

### February 13

**CWIP-1** Cigarette Tax—Informational report by wholesalers

**CWIP-2** Cigarette Tax—Informational report by wholesalers

### February 15

**CBT-100** Corporation Business Tax—Annual return for accounting period ending October 31

*continued*

### February 15 - continued

**CBT-150** Corporation Business Tax—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

**NJ-500** Gross Income Tax—Employer's monthly remittance

### February 20

**CR-1 & CNR-1** Cigarette Tax—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

**GA-1D** Motor Fuels Tax—Distributor's monthly report of gallons of fuel sold or used

**GA-1J** Motor Fuels Tax—Jobber's monthly report of gallons of fuel

**MFT-10** Motor Fuels Tax—Monthly report by seller-user of special fuels for sales and/or use in the previous month

**SCC-5** Spill Compensation and Control Tax—Monthly return

*continued*

### February 20 - continued

**ST-21** New Jersey/New York Combined State Sales and Use Tax—Monthly return

**ST-51** Sales and Use Tax—Monthly remittance

**ST-250** Combined Atlantic City Luxury Tax/State Sales Tax—Monthly return

**ST-350** Cape May County Tourism Sales Tax—Monthly return

**ST-451** Sales and Use Tax—Salem County—Monthly Return

**TP-20** Tobacco Products Wholesale Sales and Use Tax—Monthly return

**UZ-50** Combined State Sales Tax/Urban Enterprise Zone Sales Tax—Monthly return

### February 26

**PPT-41** Petroleum Products Gross Receipts Tax—Monthly return

# march

	SUN.	MON.	TUE.	WED.	THU.	FRI.	SAT.
2 0 0 1					1	2	3
	4	5	6	7	8	9	10
	11	12	13	14	15	16	17
	18	19	20	21	22	23	24
	25	26	27	28	29	30	31

## March 12

**CWIP-1 Cigarette Tax**—Informational report by wholesalers

**CWIP-2 Cigarette Tax**—Informational report by wholesalers

## March 15

**CBT-100 Corporation Business Tax**—Annual return for accounting period ending November 30

*continued*

## March 15 - continued

**CBT-150 Corporation Business Tax**—Installment payment of estimated tax for 4th, 6th, 9th or 12th month of current tax year

**NJ-500 Gross Income Tax**—Employer's monthly remittance

## March 20

**CR-1 & CNR-1 Cigarette Tax**—Monthly report of cigarettes sold or used by distributors, manufacturers, representatives and consumers

**GA-1D Motor Fuels Tax**—Distributor's monthly report of gallons of fuel sold or used

**GA-1J Motor Fuels Tax**—Jobber's monthly report of gallons of fuel

**MFT-10 Motor Fuels Tax**—Monthly report by seller-user of special fuels for sales and/or use in the previous month

**SCC-5 Spill Compensation and Control Tax**—Monthly return

*continued*

## March 20 - continued

**ST-21 New Jersey/New York Combined State Sales and Use Tax**—Monthly return

**ST-51 Sales and Use Tax**—Monthly remittance

**ST-250 Combined Atlantic City Luxury Tax/State Sales Tax**—Monthly return

**ST-350 Cape May County Tourism Sales Tax**—Monthly return

**ST-451 Sales and Use Tax—Salem County**—Monthly Return

**TP-20 Tobacco Products Wholesale Sales and Use Tax**—Monthly return

**UZ-50 Combined State Sales Tax/Urban Enterprise Zone Sales Tax**—Monthly return

## March 26

**PPT-41 Petroleum Products Gross Receipts Tax**—Monthly return

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## *from the director's desk*

As the 2000 filing season begins, I would once again like to remind you about our paperless filing methods and encourage you to try one. Whether it's NJ TeleFile, NJ PC File or e-file, you'll find that it's easier and less taxing than you might think to file your NJ income taxes and you'll get your refund in about two weeks. And this year, when you file using one of the paperless methods, you have the option of requesting direct deposit of your refund and/or homestead rebate check so you'll have access to your money that much faster. For eligibility requirements for each of these programs visit our Web site, or call 1-800-323-4400.

Be sure to take a look at the articles on the front page of this issue to learn about all the changes that affect this year's returns.